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UNCLAS SECTION 01 OF 04 LIMA 005392

SIPDIS

JUSTICE FOR OIA AND AFMLS  
TREASURY FOR FINCEN  
STATE FOR INL/LP, WHA, EB/OIA

E.O. 12958: N/A

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SUBJECT: PERU INTERNATIONAL NARCOTICS CONTROL STRATEGY  
REPORT PART II FINANCIAL CRIMES AND MONEY LAUNDERING

1. The following is Post's submission as Part II of the 2004-2005 International Narcotics Control Strategy Report (INCSR), regarding financial crimes and money laundering.

#### OVERVIEW AND INTRODUCTION

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2. Narcotics-related and other money laundering is taking place, but existing laws do not provide reliable or adequate mechanisms to estimate its scale. Such money laundering may be connected with narcotics-related activity originating in Peru, Colombia or elsewhere in the region, and may involve proceeds of narcotics sales in the United States. Peru's economy is primarily cash-based, facilitating possible money-laundering. The economy is approximately 65 percent dollarized, so money laundering is likely conducted primarily in U.S. currency. Post has no specific information on the degree to which money laundering here is controlled by drug-trafficking or terrorist groups, but such links are probable.

3. Numerous former government officials, most from the prior Fujimori Administration, are under investigation for corruption-related crimes, including money laundering. These officials have been accused of transferring tens of millions of dollars in proceeds from illicit activities (e.g. bribes, kickbacks, etc.) into offshore accounts in the Cayman Islands, the U.S., and/or Switzerland. The Attorney General, a Special Prosecutor, the office of the Superintendent of Banks (SBS) and the Peruvian Congress have conducted many investigations, some of which are ongoing, involving dozens of former GOP officials. However, the money laundering laws prior to 2002 were very limited in scope. Therefore, winning money-laundering convictions for conduct prior to 2002 will be challenging.

4. The Public Prosecutor has won two money-laundering convictions in 2005. One case was related to public corruption. The other involved money laundering of drug proceeds. There are three cases currently underway in the Peruvian court system.

5. While Peru has made a number of important advances in its money-laundering regime, there remain several critical deficiencies. The justice system moves extremely slowly, with cases taking years to develop. There are a plethora of financial investigating units, with diverse police divisions each having their own small units. These units frequently have little or no expertise in tracking or analyzing complex money-laundering activities. Corruption is endemic within the judicial system, handicapping many investigations, possibly including money-laundering cases. Finally, the informal sector of the economy is very large, greater than 50 percent of the overall economy, which means that much of the money-laundering activity is taking place beyond the view and reach of Peru's anti-money laundering regime.

#### PERU'S MONEY LAUNDERING LAW

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6. In June 2002, Peru adopted substantial changes to its existing money laundering regime, significantly broadening the definition of money laundering beyond a crime associated with narco-trafficking. Prior to the changes, money laundering was only a crime when linked to narcotics trafficking or "narcoterrorism," and included nine predicate offenses that did not include corruption, bribery or fraud. The definition of money laundering now includes all proceeds from a crime. There remains confusion, however, on the part of some GOP officials and attorneys, over whether money laundering must still be linked to the earlier list of predicate offenses.

7. The amended money laundering law is brief and lacks implementing regulations. U.S. Treasury and other observers consider that the GOP will need to significantly expand and revise the law and develop implementing regulations to make the law effective and applicable in practice.

8. Separate regulations prohibit laundering money through casinos, but the GOP lacks sufficient resources to

adequately supervise this \$1 billion industry. Peru's exchange houses, which are legal, also function with little governmental supervision.

19. In July 2005, Peru passed a law to require that individuals and entities transporting more than \$10,000 in currency or monetary instruments into or out of Peru file reports with customs. Customs is forwarding those reports to Peru's Financial Intelligence Unit (FIU) every three weeks.

#### THE FINANCIAL INTELLIGENCE UNIT

10. Peru's Financial Intelligence Unit was created by law in April 2002 to collect, analyze and disseminate information on money laundering and other financial crimes. Supporting modifications to Peru's Penal Code were also passed. The law directed that the FIU be an autonomous body, reporting information on possible financial crimes to the Attorney General's office. The FIU secures its budget from the Prime Minister's office, international sources and in small measure from assets seized as a result of FIU actions.

11. The law that established the FIU mandates that a broad range of financial and non-financial entities in Peru, including banks, companies, stock funds or brokers, casinos, real estate agencies, lotteries and customs agencies, provide the FIU with information on financial transactions of a suspicious nature. The law requires that these entities know the identities of their customers. The FIU is also empowered to request financial transaction information from exchange houses, metal and antiques traders, travel agencies and a variety of Peruvian government agencies. Existing Peruvian bank secrecy rules under Peru's constitution limit the effectiveness of the FIU law's disclosure requirements. There are two bills under consideration in Congress to amend the constitution to strengthen the disclosure requirements.

12. Financial institutions are required to report and keep records of individual currency transactions of over \$10,000 or transactions totaling \$50,000 in one month. Non-financial institutions, such as exchange houses, casinos, lotteries or others, must report individual transactions over \$2500 or monthly transactions over \$10,000. Major institutions are required to appoint supervisory-level compliance officials to ensure compliance with reporting requirements. The implementing regulations direct that non-compliance with reporting requirements be sanctioned by respective institutions "according to applicable law." Peru, however, has not adopted "due diligence" or "banker negligence" laws making individual bankers responsible if their institutions launder money.

13. The FIU law and regulations emphasize training of banking and government personnel to identify suspicious financial activities and on the establishment of systems to prevent money laundering before it occurs. The law protects reporting individuals (bankers or others) who cooperate with law enforcement agencies from any legal liability for money laundering conducted through their institutions. Finally, the law provides for the confidentiality of information gathered by the FIU and allows the FIU to exchange information with international authorities and/or with FIUs in other countries.

#### FIU NOW FULLY FUNCTIONAL

14. After an initial delay, the FIU is up and running and appears to be fully functioning with a staff of 52. As of November 2005, the FIU had received 869 reports of suspicious transactions. Of those, the FIU asked the submitting entity for additional information on approximately 70 percent of the reports. Peru joined the Egmont group of international FIU's in June 2005, and was elected to chair the Financial Action Task Force South, headquartered in Buenos Aires, Argentina.

15. As of November 2005, the FIU had sent 36 reports of money laundering to the Public Prosecutor for investigation. Of those cases, six investigations had been completed and were being presented to the judiciary for prosecution. The FIU assisted the Public Prosecutor in the prosecution of two cases. Although the cases did not originate with the FIU, the assistance in analyzing banking information was fundamental in gaining two convictions for money laundering.

#### CRIMINAL PENALTIES

16. The money laundering law establishes penalties of three to 15 years imprisonment for money laundering and associated crimes. Previously, the Peruvian penal code imposed a

mandatory penalty of life imprisonment upon bank and finance officials convicted of money laundering (more severe than the penalties for drug trafficking). While the amended law may eventually facilitate prosecutions, its brevity and lack of implementing regulations are likely to limit its effectiveness.

#### ASSET FORFEITURE

17. Peru currently lacks comprehensive and effective asset forfeiture legislation. The financial investigative office of the Peruvian National Police's Directorate of Counternarcotics has seized numerous properties over the last several years, but few were turned over to the police to support counternarcotics efforts, and no clear mechanism exists to distribute seized assets among government agencies. A bill to amend the asset forfeiture regime is being considered by the congressional committee with jurisdiction.

#### TERRORIST FINANCE

18. The Peruvian Congress approved Peru's accession to the International Convention for the Suppression of the Financing of Terrorism on 26 Oct 2001. The Office of the Superintendent of Banks routinely circulates to all financial institutions in Peru updated lists of individuals and entities that have been included on the UN 1267 Sanctions Committee's consolidated list as being linked to Usama bin Ladin and Al Qa'ida, as well as those that have been designated as terrorism financiers by the USG. The Superintendent of Banks provides Post with copies of the responses of all financial institutions.

19. However, the Superintendent of Banks does not have the authority to seize or freeze assets of individuals involved in terrorist financing. In the event that such assets are identified, the Superintendent must petition a judge to seize or freeze them. A final judicial decision is then needed to dispose of or use such assets. To date, no assets connected to designated individuals or entities have been identified, frozen or seized by banks operating in Peru. Foreign Ministry officials are working with other GOP agencies to complete the necessary legal revisions that will permit asset freezing actions.

20. Finally, to date Peru has taken no actions to thwart the misuse of charitable and/or non-profit entities that can be used as conduits for the financing of terrorism.

#### INTERNATIONAL COOPERATION AND SUPPORT

21. The U.S. Department of Treasury's Office of Technical Assistance (OTA) and Post developed a two-year technical assistance program to help Peru fight money laundering, other financial crimes and corruption. Post arranged funding through the Narcotics Affairs Section (NAS) to support a resident Treasury advisor, who worked in Peru from November 1, 2003 of October 31, 2005. The resident advisor worked closely with FIU staff to help them expand their operations and arranged FIU staff visits to the U.S., Spain and Guatemala and brought international experts to Peru to train FIU and other officials.

22. The resident advisor also coordinated assistance to the GOP in three other areas: 1) developing a strategic plan to implement an anti-money laundering regime; 2) developing a strategic plan to identify, investigate and prosecute money laundering cases; and 3) improving the efficiency and effectiveness of anti-corruption investigations. One notable outcome in 2005 was the passage of legislation requiring that persons carrying more than \$10,000 in currency notify customs upon entering the country.

23. The NAS of the U.S. Embassy in Peru budgeted \$250,000 for the purchase of a computer system for the FIU. The system was purchased and installed in July 2005. The OTA funded \$50,000 in computer equipment for the anti-money laundering unit of the Peruvian National Police. In June 2005, an OTA advisor gave a presentation on regulation of the gaming industry to more than 100 representatives of the Office of Prosecutors. In August 2005, FinCEN funded the travel and lodging for three Peruvian participants for a one-week money laundering training program in Vienna, Virginia. OTA funded an additional two positions.

24. In 2005, OTA and the Drug Enforcement Administration in Peru worked closely on a project related to the organizing of the Peruvian National Police and Customs presence at Jorge Chavez International Airport in Lima, Peru. The project helped enhance the coordination between the two organizations and create a more cohesive operation. OTA worked with Peruvian Customs to provide a two-week training

program on detecting and interdicting illegal and undeclared bulk cash shipments. The Department of Homeland Security, Immigration and Customs Enforcement provided the training.

¶25. Finally, the GOP is also working with GAFISUD, the IDB, the UN, Spain, Colombia and other organizations and countries on cooperative efforts to fight money laundering and corruption in Peru.

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